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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,451	06/27/2001	Brian Arnold	USM1901	4244
26161	7590	01/23/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			NORDMEYER, PATRICIA L	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/869,451

Applicant(s)

ARNOLD, BRIAN

Examiner

Patricia L. Nordmeyer

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 11 December 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 18-33 and 37-41.Claim(s) withdrawn from consideration: 1-17 and 34-36.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

### DETAILED ACTION

**Continuation of #5:** The application is not placed in condition for allowance because:

Applicant's claims are still rejected by the previous applied prior in the paper dated June 9, 2003.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant appears to be arguing the separate aspects of each of the applied references and not the combination of references, since the combination of Brehmer et al. and Mobius was being used to show the stiffener composition disposed between two substrates.

In response to Applicant's argument that Mobius only discloses a single layer and fails to disclose the composition being disposed between two layers of sheet material, Mobius does disclose the composition between two layers of sheet material, the inner and the upper (Column 8, lines 1 – 19).

In response to Applicant's argument that Brehmer et al. provide no teach or suggestion that the sheet material have openings of a size to allow a stiffener composition to pass through it, Brehmer is made from either a woven or non-woven material (Column 2, lines 64 – 68), which inherently contains openings. The claim limitation reads "a size sufficient to allow the

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polymeric material... to pass through the openings", and the examiner believes that the openings in the woven or non-woven cloth meet this limitations.

In response to Applicant's argument that the fillers of Mobius could not replace fillers of Brehmer, Brehmer states only examples of inorganic or organic fillers that may be used in the stiffener, not all of the types of inorganic or organic materials that may be used. Mobius discloses the desired type of fillers that may be used, but without the plastic coating around the particles; however since the fillers are part composition using the same type of plastics (i.e. styrene), the particles would become coated as in Brehmer, thereby making particles with the same properties.

In response to Applicant's argument that Burgess et al. only disclose a single layer and fails to disclose the composition being disposed between two layers of sheet material, Burgess et al. do disclose the composition between two layers of sheet material, the inner and the upper (Figure 1, between the stiffener and the upper), where the composition is dispersed throughout the surface of the stiffener (Column 7, lines 25 - 28).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0987.

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

*1/8/04*